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June 7, 2017

Via ECF and Hand Delivery

The Honorable Anita B. Brody
United States District Court
Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street, Room 7613
Philadelphia, PA 19106-1744

Re: In Re: National Football League Players' Concussion Injury Litigation
No. 2:12-md-02323-AB

Dear Judge Brody:

We represent NFL Case Consulting, LLC and Jim McCabe (collectively “Case Strategies Group” or “CSG”) in connection with Co-Lead Class Counsel’s Motion for an Injunction Prohibiting Improper Communications with the Class (the “Motion”) (ECF No. 7347). We submit this report to respond to Co-Lead Class Counsel’s Status Report dated June 6, 2017 (ECF No. 7777), and Notice of Withdrawal (ECF No. 7779). Given the significant factual omissions in that Report, combined with Co-Lead Class Counsel’s stated intention to again litigate against CSG and “various claims services providers” based upon anonymous, unsubstantiated and unverified reports, CSG felt it important to present the Court with a more fulsome status update detailing the significant steps CSG has taken to address all concerns of Co-Lead Class Counsel to date.

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As we informed the Court in our May 12, 2017 status report (ECF No. 7624), CSG has taken steps to address all substantive issues raised by Co-Lead Class Counsel relating to the Motion and all concerns raised by Co-Lead Class Counsel. Since that status update, CSG has continued to address Co-Lead Class Counsel's requests diligently and had been in the process of negotiating an agreement with Co-Lead Class Counsel that balanced Co-Lead Counsel's requests and CSG's legitimate interest in meeting its clients' needs without undue and ongoing interference from Co-Lead Class Counsel. CSG has provided Co-Lead Class Counsel with its marketing materials, form contracts including services provided to Class Members, written disclosures to Class Members, and a list of attorneys provided to Class Members by CSG as potential options for representation in circumstances where a Class Member expresses an interest in individual representation.¹ CSG and Co-Lead Class Counsel had even largely agreed on the terms of a Confidentiality Agreement under which CSG would provide Co-Lead Class Counsel with CSG's full client list. Throughout this process, CSG met all reasonable requests posed by Co-Lead Class Counsel.

Despite CSG's efforts to address all items raised by Co-Lead Class Counsel, on June 5, 2017, Co-Lead Class Counsel again unilaterally declared an impasse with CSG because of "increasing reports of Class Member confusion" originating from claims service providers, including CSG. A copy of the correspondence between counsel dated June 5, 2017 is attached hereto as Exhibit 'A.' CSG responded that same day expressing concern over Co-Lead Class Counsel's intent to raise issues of Class Member confusion with the Court in any way that would

¹ As far as CSG is aware, Co-Lead Class Counsel has already utilized the list of attorneys to contact each of the seven firms on CSG's list provided to Class Members as potential options for representation in this matter. CSG understands that many of these attorneys have confirmed to Co-Lead Class Counsel that their clients both understand the services provided by CSG and do not wish to have Co-Lead Class Counsel interfere with their attorney-client relationship.

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imply CSG's involvement. *Id.* Notwithstanding, Co-Lead Class Counsel filed their status report naming CSG as a claims services provider causing alleged confusion in Class Members.

Co-Lead Class Counsel's recent status update (ECF No. 7777) and withdrawal of the Motion (ECF No. 7779) confirms that Co-Lead Class Counsel is no longer concerned with alleged misrepresentations to Class Members based upon anonymous allegations – and for good reason. Such claims were verifiably false.² Yet Co-Lead Class Counsel's status update indicates that it will again present the Court with alleged instances of “confusion” by Class Members caused by CSG, and at the same time, implying that it also would proceed against other unnamed service providers with no connection to CSG. While CSG has no knowledge of the conduct of any other service provider, CSG is gravely concerned that Co-Lead Class Counsel may present a motion to the Court concerning CSG's conduct. CSG's concerns are especially acute given that Co-Lead Class Counsel has indicated they are considering this new motion despite CSG's remedial steps to date and representations made to Co-Lead Counsel by attorneys representing CSG's clients that both they and the clients fully understand the services provided by CSG. Indeed as Co-Lead Class Counsel is well aware, CSG provided all of its clients with both verbal and written disclosures the subject of which coincides precisely with the areas of alleged confusion outlined in Co-Lead Class Counsel's recent status update. Even a cursory comparison of CSG's disclosures reveals this fact:

² As detailed in correspondence with Co-Lead Class Counsel, the lone instance where the Motion provided CSG with sufficient detail to investigate a claim of misrepresentation to Class Members turned out to be entirely false. As a result of this unsubstantiated and ultimately false claim contained within a public pleading, one of CSG's employees identified by name in the motion, Andrew Schneider, has suffered ongoing harm. CSG has continually informed Co-Lead Class Counsel that it stands ready to investigate any alleged instances of misrepresentations, misleading statements, or confusion by Class Members. *See* Exhibit A. Despite this, Co-Lead Class Counsel has never provided CSG with any further alleged incidents to investigate since the filing of the Motion.

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<u>Area of Confusion Identified by Co-Lead Class Counsel's June 6, 2017 Status Report</u>	<u>Written Disclosures to Class Members Provided by CSG³</u>
Class Member believes “that they were dealing with the official Court-appointed Claims Administrator...”	(5) Case Strategies Group does not work with the Claims Administrator’s Office and was not appointed or endorsed by the United States District Court for the Eastern District of Pennsylvania;
Class Member believes the “entity ha[s] the imprimatur of Class Counsel.”	(1) Case Strategies Group is not a law firm; (2) Case Strategies Group does not work for a law firm; (3) Case Strategies Group works with a network of attorneys and can provide a Class Member with a list of options for legal counsel, but that a Class Member is free to retain any attorney he chooses; (7) The Class Member does not have to hire Case Strategies Group or an attorney to file a claim (9) The Class Member is aware that Case Strategies Group assists an attorney of the Class Member’s choosing with the administrative aspects of his claim
Class Member received “false representatio[n] that Qualifiying Diagnoses can still be obtained outside the auspices of the Settlement Program...” and that	(8) The Class Member is aware and understands that Case Strategies Group does assist in the processing of his claim, but the final decision as to how to proceed is the Class

³ Co-Lead Class Counsel were provided with a list of the disclosures CSG intended to send to Class Members with whom it had contracted well in advance of those disclosures being provided to Class Members and requested comments and feedback from Co-Lead Class Counsel. Co-Lead Class Counsel did not provide any feedback or objections to those disclosures.

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Area of Confusion Identified by Co-Lead Class Counsel's June 6, 2017 Status Report	Written Disclosures to Class Members Provided by CSG ³
“Qualified BAP Providers and Qualified MAF Physicians are ... under the NFL’s thumb.”	Member’s choice as the client (10) The Class Member is aware and understands that he will be in control of the decision made regarding the pursuit of his claim. ⁴

Given these disclosures, to the extent Co-Lead Class Counsel can identify any Class Members who are confused, those Class Members are not clients of CSG. Further, counsel for CSG has repeatedly informed Co-Lead Class Counsel that CSG “stands ready and willing to investigate fully all reports of ‘confusion’ by Class Members regarding the services [CSG] offers to Class Members” Exhibit A. Despite this standing offer, Co-Lead Class Counsel has never provided CSG with any information which would permit an investigation of any reports of confusion. And, as Co-Lead Class Counsel is aware, all Class Members with whom CSG has contracted are ably represented by individual counsel. As such, CSG believes Co-Lead Class Counsel’s reference to CSG alongside other service providers causing Class Member confusion is wholly without merit.

CSG welcomes Co-Lead Class Counsel’s decision to withdraw and abandon the Motion. CSG has already been forced to expend tens of thousands of dollars in legal fees defending that Motion, which was based upon nothing more than anonymous allegations that were ultimately demonstrated to be false. Yet Co-Lead Class Counsel’s recent status update indicates that CSG

⁴ CSG’s website also informs Class Members that one of the services offered by CSG is assisting Class Members in “making decisions about treating and assessing physicians and neuropsychological clinicians, or help selecting an appropriate physician from the list provided by the Claims Administrator (per the court-approved settlement process) to provide a qualifying diagnosis (as defined in the settlement)” <http://casestrategiesgroup.com/about-the-nfl-concussion-settlement/> (Last accessed June 7, 2017).

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may soon be the subject of a new motion by Co-Lead Class Counsel which is similarly meritless.

We wanted to bring these facts and circumstances to the Court's attention so as to avoid any conclusion that CSG has been anything but fully responsive to Co-Lead Class Counsel's concerns or an inference that CSG's clients do not have a full and complete understanding of CSG and its role in their case.

Respectfully submitted,

/s/ Richard L. Scheff
Richard L. Scheff

cc: Christopher A. Seeger, Esq., *Co-Lead Class Counsel*
Sol Weiss, Esq., *Co-Lead Class Counsel*
Lynn B. Bayard, Esq., *Counsel for the NFL*
Douglas M. Burns, Esq., *Counsel for the NFL*